

§ 143B-437.02. Site infrastructure development.

(a) Findings. – The General Assembly finds that:

- (1) It is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the expansion of existing business and industry within the State and by recruiting and attracting new business and industry to the State.
- (2) Both short-term and long-term economic trends at the State, national, and international levels have made the successful implementation of the State's economic development policy and programs both more critical and more challenging; and the decline in the State's traditional industries, and the resulting adverse impact upon the State and its citizens, have been exacerbated in recent years by adverse national and State economic trends that contribute to the reduction in the State's industrial base and that inhibit the State's ability to sustain or attract new and expanding businesses.
- (3) The economic condition of the State is not static and recent changes in the State's economic condition have created economic distress that requires the enactment of a new program as provided in this section that is designed to stimulate new economic activity and to create new jobs within the State.
- (4) The enactment of this section is necessary to stimulate the economy, facilitate economic recovery, and create new jobs in North Carolina and this section will promote the general welfare and confer, as its primary purpose and effect, benefits on citizens throughout the State through the creation of new jobs, an enlargement of the overall tax base, an expansion and diversification of the State's industrial base, and an increase in revenue to the State and its political subdivisions.
- (5) The purpose of this section is to stimulate economic activity and to create new jobs within the State.

(b) Fund. – The Site Infrastructure Development Fund is created as a restricted reserve in the Department of Commerce. Funds in the fund do not revert but remain available to the Department for these purposes. The Department may use the funds in the fund only for the following purposes:

- (1) For site development in accordance with this section.
- (2) To acquire options and hold options for the purchase of land in accordance with subsection (m) of this section.

(c) Definitions. – The definitions in G.S. 143B-437.51 apply in this section. In addition, the following definitions apply in this section:

- (1) Department. – The Department of Commerce.
- (2) Site development. – Any of the following:
 - a. A restricted grant or a forgivable loan made to a business to enable the business to acquire land, improve land, or both.
 - b. A grant to one or more State agencies or nonprofit corporations to enable the grantees to acquire land, improve land, or both and to lease the property to a business.
 - c. A grant to one or more local government units to enable the units to acquire land, improve land, or both and to lease the property to a business.

(d) Eligibility. – To be eligible for consideration for site development for a project, a business must meet both of the following conditions:

- (1) The business will invest at least one hundred million dollars (\$100,000,000) of private funds in the project.

(2) The project will employ at least 100 new employees.

(e) Health Insurance. – A business is eligible for consideration for site development under this section only if the business provides health insurance for all of the full-time employees of the project with respect to which the application is made. For the purposes of this subsection, a business provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

Each year that a contract for site development under this section is in effect, the business must provide the Department of Commerce a certification that the business continues to provide health insurance for all full-time employees of the project governed by the contract. If the business ceases to provide health insurance to all full-time employees of the project, Department shall provide for reimbursement of an appropriate portion of the site development funds provided to the business.

(f) Safety and Health Programs. – In order for a business to be eligible for consideration for site development under this section, the business must have no citations under the Occupational Safety and Health Act that have become a final order within the past three years for willful serious violations or for failing to abate serious violations with respect to the location for which the grant is made. For the purposes of this subsection, "serious violation" has the same meaning as in G.S. 95-127.

(g) Environmental Impact. – A business is eligible for consideration for site development under this part only if the business certifies that, at the time of the application, there has not been a final determination unfavorable to the business with respect to an environmental disqualifying event. For the purposes of this section, a "final determination unfavorable to the business" occurs when there is no further opportunity for the business to seek administrative or judicial appeal, review, certiorari, or rehearing of the environmental disqualifying event and the disqualifying event has not been reversed or withdrawn.

(h) Selection. – The Department of Commerce shall administer the selection of projects to receive site development. The selection process shall include the following components:

- (1) Criteria. – The Department of Commerce must develop criteria to be used to identify and evaluate eligible projects for possible site development.
- (2) Initial evaluation. – The Department must evaluate major competitive projects to determine if site development is merited and to determine whether the project is eligible and appropriate for consideration for site development.
- (3) Application. – The Department must require a business to submit an application in order for a project to be considered for site development. The Department must prescribe the form of the application, the application process, and the information to be provided, including all information necessary to evaluate the project in accordance with the applicable criteria.
- (4) Committee. – The Department must submit to the Economic Investment Committee the applications for projects the Department considers eligible and appropriate for consideration for site development. In evaluating each application, the Committee must consider all of the factors set out in Section 2.1(b) of S.L. 2002-172.
- (5) Findings. – In order to recommend a project for site development, the Committee must make all of the following findings:
 - a. The conditions for eligibility have been met.
 - b. Site development for the project is necessary to carry out the public purposes provided in subsection (a) of this section.

- c. The project is consistent with the economic development goals of the State and of the area where it will be located.
 - d. The affected local governments have participated in recruitment and offered incentives in a manner appropriate to the project.
 - e. The price and nature of any real property to be acquired is appropriate to the project and not unreasonable or excessive.
 - f. Site development under this section is necessary for the completion of the project in this State.
- (6) Recommendations. – If the Committee recommends a project for site development, it must recommend the amount of State funds to be committed, the preferred form and details of the State participation, and the performance criteria and safeguards to be required in order to protect the State's investment.

(i) Agreement. – Unless the Secretary of Commerce determines that the project is no longer eligible or appropriate for site development, the Department shall enter into an agreement to provide site development within available funds for a project recommended by the Committee. Each site development agreement is binding and constitutes a continuing contractual obligation of the State and the business. The site development agreement must include all of the performance criteria, remedies, and other safeguards recommended by the Committee or required by the Department to secure the State's investment. Each site development agreement must contain a provision prohibiting a business from receiving a payment or other benefit under the agreement at any time when the business has received a notice of an overdue tax debt and the overdue tax debt has not been satisfied or otherwise resolved. Nothing in this section constitutes or authorizes a guarantee or assumption by the State of any debt of any business or authorizes the taxing power or the full faith and credit of the State to be pledged.

The Department shall cooperate with the Department of Administration and the Attorney General's Office in preparing the documentation for the site development agreement. The Attorney General shall review the terms of all proposed agreements to be entered into under this section. To be effective against the State, an agreement entered into under this section must be signed personally by the Attorney General.

(j) Safeguards. – To ensure that public funds are used only to carry out the public purposes provided in this section, the Department shall require that each business that receives State-funded site development must agree to meet performance criteria to protect the State's investment and assure that the projected benefits of the project are secured. The performance criteria to be required shall include creation and maintenance of an appropriate level of employment and investment over the term of the agreement and any other criteria the Department considers appropriate. The agreement must require the business to repay or reimburse an appropriate portion of the State funds expended for the site development, based on the extent of any failure by the business to meet the performance criteria. The agreement must provide a method for securing these payments from the business, such as structuring the site development as a conditional grant, a forgivable loan, or a revocable lease.

(k) Monitoring and Reports. – The Department is responsible for monitoring compliance with the performance criteria under each site development agreement and for administering the repayment in case of default. The Department shall pay for the cost of this monitoring from funds appropriated to it for that purpose or for other economic development purposes.

On September 1 of each year until all funds have been expended, the Department shall report to the the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, the chairs of the House of Representatives Appropriations Committee on

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Agriculture and Natural and Economic Resources, and the Joint Legislative Economic Development and Global Engagement Oversight Committee regarding the Site Infrastructure Development Program. This report shall include a listing of each agreement negotiated and entered into during the preceding year, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, and the amount of the site development incentive expected to be paid under the agreement during the current fiscal year. The report shall also include detailed information about any defaults and repayment during the preceding year and the information contained in the report required by G.S. 105-277.15A(g). The Department shall publish this report on its web site and shall make printed copies available upon request.

(l) Reserved for future codification purposes.

(m) Options. – The Department of Commerce may acquire options and hold options for the purchase of land for an anticipated industrial site if all of the following conditions are met:

- (1) The options are necessary to provide a large, regional industrial site that cannot be assembled by local governments.
- (2) The acquisition of the options is approved by the Committee. (2003-435, 2nd Ex. Sess., s. 1; 2004-124, s. 6.26(a), (b); 2009-451, s. 14.5(a); 2010-147, s. 1.5; 2013-130, s. 4; 2016-5, s. 5.5(e); 2017-57, s. 14.1(s).)